

**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
J & J Broadcasting, Inc.	)	
	)	
Antenna Structure Registrant	)	File No. EB-FIELDNER-19-00029539
ASR# 1035233, 1035234, 1035235	)	
	)	
Cary Township, Wisconsin	)	

**NOTICE OF VIOLATION**

**Released: September 17, 2019**

By the Regional Director, Region One, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to section 1.89 of the Commission’s rules (Rules),<sup>1</sup> to J & J Broadcasting, Inc., registrant of antenna structures 1035233, 1035234 and 1035235 in Cary Township, Wisconsin. Pursuant to section 1.89(a) of the Rules, issuance of this Notice does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violation(s) noted herein.<sup>2</sup>
  
2. On July 31st and August 1st, 2019, an Agent of the Enforcement Bureau’s Chicago Office investigated and found the following violations:
  - a. 47 CFR § 17.23: “[E]ach antenna structure must be painted and lighted in accordance with any painting and lighting requirements prescribed on the antenna structure’s registration, or in accordance with any other specifications provided by the Commission.” The FCC’s Antenna Structure Registration (ASR) database currently indicates that antenna structures 1035233, 1035234 and 1035235 require a flashing red beacon at the top-level and steady burning red obstruction lighting at the approximate mid-point of the antenna structure in accordance with FCC Paragraphs 1, 3, 11, and 21. At the time of inspection, which was after sunset and before dawn, the Agent observed that all of the lights on the three antenna structures were extinguished.

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<sup>1</sup> 47 CFR § 1.89.

<sup>2</sup> 47 CFR § 1.89(a).

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- b. 47 CFR § 17.48(a): “The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part ...[s]hall report immediately to the FAA, by means acceptable to the FAA, any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes...” At the time of the inspection, J & J Broadcasting, Inc. did not know that the obstruction lighting was extinguished, nor had they reported the obstruction light outages to the FAA.<sup>3</sup>
  
- c. 47 C.F.R. § 73.49: “Antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed with effective locked fences or other enclosures. Ready access must be provided to each antenna tower base for meter reading and maintenance purposes at all times.” The Agent observed that ASR 1035235, the tower used for non-directional day and night operation, was not enclosed by a fence or other enclosure.<sup>4</sup>

3. Pursuant to section 308(b) of the Communications Act of 1934, as amended,<sup>5</sup> and section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, J & J Broadcasting, Inc., must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a timeline for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.<sup>6</sup>

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<sup>3</sup> On August 6, 2019, the Agent contacted the Federal Aviation Administration (FAA) to notify them of the lighting outage and request that a Notice To Airman (NOTAM) be issued. The FAA issued a NOTAM for each structure; IWD 08/003 for ASR 1035233, IWD 08/004 for ASR 1035234 and IWD 08/005 for ASR 1035235.

<sup>4</sup> On June 12, 2019, the Commission granted J & J Broadcasting, Inc. an extension of Special Temporary Authority (File No. BESTA - 20190520AAL) to operate AM Station WJMS at nighttime with a non-directional antenna using a maximum of 113 Watts as specified in the Construction Permit BMP-20181022ABC with no change in its licensed daytime operation.

<sup>5</sup> 47 U.S.C. § 308(b).

<sup>6</sup> 47 CFR § 1.89(c).

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4. In accordance with section 1.16 of the Rules, we direct J & J Broadcasting, Inc., to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of J & J Broadcasting, Inc., with personal knowledge of the representations provided in J & J Broadcasting, Inc., response, verifying the truth and accuracy of the information therein,<sup>7</sup> and confirming that all of the information requested by this Notice which is in the licensee's possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.<sup>8</sup>

5. All replies and documentation sent in response to this Notice should be marked with the File No. specified above, and mailed and emailed to the following address:

Federal Communications Commission  
Enforcement Bureau  
Columbia Regional Office  
9050 Junction Drive  
Annapolis, Maryland 20701

6. This Notice shall be sent to J & J Broadcasting, Inc., Attn: Mr. Jerry Hackman, 63120 Phantom Lake Road, Iron River, Wisconsin 54847 and its counsel Cary S. Tepper, Esq., Tepper Law Firm, LLC, 4900 Auburn Avenue, Suite 100, Bethesda, Maryland 20814-2632.

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<sup>7</sup> Section 1.16 of the Rules provides that “[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person . . . . Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.” 47 CFR § 1.16.

<sup>8</sup> 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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7. The Privacy Act of 1974<sup>9</sup> requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski  
Regional Director  
Region One  
Enforcement Bureau  
Federal Communications Commission

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<sup>9</sup> 5 U.S.C. § 552a(e)(3).